

Pending before the court is Plaintiff James Brian Spencer's motion to compel the production of documents which was filed on May 6, 2005. The plaintiff states that he served his fifth request for production of documents upon Defendants Horry County Police Department and Horry County Sheriff's

Department and their attorney of record on March 9, 2005. The request asked for an exemplar tape from Officer Brantley's records. On April 6, 2005, the Horry County defendants responded to the request by stating all videotapes and equipment were delivered to Plaintiff's videotape expert and that they are not in possession of this request. In this motion, the plaintiff asks this court for an Order compelling the defendants to provide the requested videotape. However, this court cannot order the defendants to produce a videotape which they assert they do not have.

Additionally, this Court takes note that under Local Rule 37.01 (D.S.C.) motions to compel discovery must be filed within twenty (20) days after the receipt of the discovery response to which the motion to compel is directed. Considering such, this motion was filed untimely.

Therefore, for the reasons stated above, the plaintiff's motion to compel (Doc. # 134) is **DENIED.**

AND IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
July 18, 2005.